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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
WIESE, NOAH S				
ART UNIT		PAPER NUMBER		
1793				
NOTIFICATION DATE		DELIVERY MODE		
04/24/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/567,442

Applicant(s)

OKI, KAZUO

Examiner

NOAH S. WIESE

Art Unit

1793

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 4-16 and 18-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/J.A. LORENZO/
Supervisory Patent Examiner, Art Unit 1793

/Noah S Wiese/
Examiner, Art Unit 1793

Applicant's amendment to independent claim 1 does not place the claims in condition for allowance because the amendment simply places subject matter from the previously rejected claim 17 into the independent claim. Claim 1 remains rejected under the previously issued grounds because Sakaguchi teaches that the aluminosilicate particles are crystalline.

Applicant argues that the combination of Sakaguchi and Hagiwara is done only through applicant's disclosure as a guide. This is not the case. As discussed in the previous office action, one of ordinary skill in the art would have been motivated to combine Sakaguchi and Hagiwara because Hagiwara teaches similar aluminosilicate particles to Sakaguchi and teaches that these particles can advantageously be used as antibacterial and deodorizing particles. These are clearly uses for which there is a need, and one would have had the desire to use the Sakaguchi particles in these types of processes if guided by Hagiwara to this possibility.

Applicant further argues that the combination of Sakaguchi and Hagiwara does not teach the instantly claimed process because the Hagiwara particles do not by themselves have a deodorizing function. However, this assertion ignores the actual teachings of Hagiwara. Hagiwara teaches that the additional substances discussed by applicant above, such as activated charcoal, are added to the polymer and aluminosilicate particles in order to intensify the deodorizing effects. Obviously there would be no deodorizing effects to intensify if the antibacterial aluminosilicate particles did not have deodorizing effects on their own. Thus, applicant's argument that the combination of Sakaguchi and Hagiwara does not teach the instantly claimed invention is not persuasive.

Applicant argues that because Sakaguchi et al teaches crystalline particles and Hagiwara teaches amorphous particles, one of ordinary skill would not have expected the antibacterial metals to work similarly in both. However, Sakaguchi and Hagiwara teach particles of equivalent composition and size. There would therefore be no reason for one of ordinary skill in the art to expect that the process used to add antibacterial metals to the Hagiwara particles could not also be used to add said metals to the Sakaguchi particles in order to realize the same benefits. Hagiwara does not teach that the amorphous nature of the aluminosilicate particles is the reason that adding said metals is possible. Therefore, the previously discussed motivation for modification is still valid, and this line of argument is not persuasive.

Applicant contends that a cancrinite shape is neither disclosed by the applied prior art. However, Sakaguchi teaches that the aluminosilicate particles have a cancrinite X-ray diffraction pattern. This certainly at least suggests that the particles have a cancrinite shape.

Applicant argues that the teachings of Sakaguchi in view of Hagiwara and Peterson do not teach deodorizing a sulfur-containing odor because the applied prior art does not teach that sulfur-containing odors are caused by bacterial. However, this argument is based on applicant's misinterpretation of Hagiwara as discussed above. Contrary to applicant's assertion, Hagiwara does not teach that only bacterial-caused odors can be treated by the aluminosilicate particles, but instead teaches that the particles have deodorizing effects on their own. Thus, one of ordinary skill would have been motivated to use them in various situations where deodorizing was needed. Peterson shows that these common situations include deodorizing sulfur-containing odors. Thus, clear motivation exists to apply the method taught by Sakaguchi in view of Hagiwara to sulfur-containing odors. This line of argument is therefore unconvincing.

Applicant further argues that there is no problem with the method taught by Sakaguchi in view of Hagiwara that requires the acid treatment of Yang to remedy. However, as discussed in the previous office action, the teachings of Yang are used to provide a guide to the level of acid treatment taught by Hagiwara because Hagiwara is silent to the specific level.

Applicant traverses the finality of the previous office action on the basis that the claims presented prior to the first office action were "examinable". Applicant contends that the examiner should have searched the claims on the merits. However, this contention begs the question as to what specifically should have been examined in the initially presented set of claims. Should the search have included only the compositional limitations? Or the composition used in some specific deodorization process disclosed in the specification but not claimed? In order to determine the patentability of a method, it is necessary to decide whether the claimed method has been previously taught. This is impossible when the method is claimed in a manner so vague as to not include any active method steps, as was the case in the initially presented claims. Thus, the first office action was proper. The claims were finally rejected based on new grounds necessitated by applicant's amendments filed 09/24/2008. The finality of this rejection was proper. Thus, applicant's traversal is not persuasive.